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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11                  CHRISTOPHER J. SANCHEZ,

12                  Plaintiff,

13                  v.

14                  HAROLD CLARKE *et al.*,

15                  Defendants.

16                  Case No. C05-5323RBL

17                  REPORT AND  
18                  RECOMMENDATION  
19                  REGARDING INJUNCTIVE  
20                  RELIEF

21                  **NOTED FOR:**  
22                  September 23<sup>rd</sup>, 2005

23                  This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge  
24 pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR  
25 3, and MJR 4. Before the court are two motions for preliminary injunctive relief. (Dkt. # 7 and 8).  
26 Defendants have addressed the motion regarding classification, (Dkt. # 8), but have not addressed the  
27 motion regarding mail, (Dkt. # 7). (Dkt. # 18). Defendants counsel asserts they have not been properly  
28 served with the motion regarding mail. (Dkt. # 19). There is no proof of service.

29                  Any motion plaintiff wishes the court to consider must be properly served on opposing counsel.  
30 The court will not consider the motion regarding mail at this time. If plaintiff wishes the court to  
31 consider this motion he should re note the motion and properly serve opposing counsel .

1 Plaintiff has spent the last year on intensive management status as a result of a fight with another  
2 inmate. That year is now over and in the normal course of business plaintiffs classification is being  
3 reviewed.

4 This action concerns plaintiff being placed in an intensive management unit and the possibility of  
5 his being released from that unit back into general population. Plaintiff alleges he was injured in the  
6 fight with another inmate a year ago and he can no longer defend himself. He alleges there are inmates  
7 in the prison who wish to harm him and plaintiff alleges he will be in danger if he is released back into  
8 general population in the prison. He asks for transfer to another prison, Mc Neil Island. (Dkt. # 8).

9 Defendants have responded indicating that plaintiff has made prison officials aware of his  
10 concerns and his counselor is recommending plaintiff be transferred to another prison and kept on  
11 intensive management status for the time being. That classification would preclude release into general  
12 population. (Dkt. # 18).

13 DISCUSSION

14 The basic function of injunctive relief is to preserve the status quo ante item pending a  
15 determination of the action on the merits. Los Angeles Memorial Coliseum Com'n v. National  
16 Football League, 634 F.2d 1197, 1200 (9<sup>th</sup> Cir. 1980). A party seeking injunctive relief must fulfill  
17 one of two standards, the "traditional" or the "alternative." Cassim v. Bowen, 824 F.2d 791, 795 (9<sup>th</sup>  
18 Cir. 1987).

19 Under the traditional standard, a court may issue preliminary relief if it finds that (1) the  
20 moving party will suffer irreparable injury if the relief is denied; (2) the moving party will  
21 probably prevail on the merits; (3) the balance of potential harm favors the moving party; and  
22 (4) the public interest favors granting relief. . . . Under the alternative standard, the moving  
party may meet its burden by demonstrating either (1) a combination of probable success and  
the possibility of irreparable injury or (2) that serious questions are raised and the balance of  
hardships tips sharply in its favor.

23 Id. (citations omitted).

24 Plaintiff fulfills neither test. Plaintiff has shown at best that prison officials are reviewing his  
25 classification in the ordinary course of business. He has not shown there is any immediate threat and  
26 prison officials indicate they are aware of plaintiff's concerns and do not plan to release him into  
27 general population at this time. Accordingly the motion for injunctive relief should be denied at this  
28 Report and Recommendation- 2

1 time

2 CONCLUSION

3 For the reasons outlined above the undersigned recommends **DENYING** this motion. A  
4 proposed order accompanies this Report and Recommendation.

5 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the  
6 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.  
7 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
8 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule  
9 72(b), the clerk is directed to set the matter for consideration on **September 23<sup>rd</sup>, 2005**, as noted in  
10 the caption.

11 DATED this 30<sup>th</sup> day of August, 2005.  
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13 /S/ J. Kelley Arnold  
14 J. Kelley Arnold  
United States Magistrate Judge  
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